

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JAMES A. HAUSER,

Plaintiff,
v.

Case No. 08-CV-321

MICHAEL J. ASTRUE, Commissioner
for Social Security Administration,

Defendant.

ORDER

On April 17, 2008, plaintiff James A. Hauser filed a complaint seeking review of the denial of his claim for social security disability benefits pursuant to 42 U.S.C. § 405(g). In connection with his complaint, the plaintiff filed a motion to proceed in forma pauperis.

Title 28 U.S.C. § 1915 is designed to ensure that indigent litigants have meaningful access to the federal courts. *Neitzke v. Williams*, 490 U.S. 319, 324 (1989) (citing *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 342-43 (1948)). To authorize a litigant to proceed in forma pauperis, the court must first determine that the litigant is unable to pay the costs of commencing the action and still be able to provide for “the necessities of life.” *Adkins*, 335 U.S. 331, 339 (1948).

The plaintiff’s petition for leave to proceed in forma pauperis indicates that he lives rent-free in a home owned by his family, his monthly income amounts to approximately \$160, his savings amount to approximately \$160, he owns a 1993 Chevrolet Blazer with 120,000 miles, he owes \$1,000 to M&I Bank, and he obtains

meals from the Salvation Army and at local food pantries. Thus, according to the petition, the plaintiff is unable to pay the \$350 filing fee in this action without undue hardship or deprivation of life's necessities. See *Adkins*, 335 U.S. at 339. Accordingly, the court concludes that the plaintiff has demonstrated the requisite financial need to proceed in forma pauperis.

The plaintiff next must demonstrate that his action has merit as required by 28 U.S.C. § 1915(e)(2)(B)(I). An action is frivolous if there is no arguable basis for relief either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *Casteel v. Pieschek*, 3 F.3d 1050, 1056 (7th Cir. 1993).

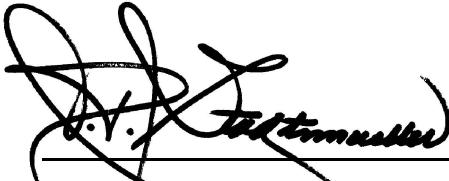
Under 42 U.S.C. § 405(g), plaintiff has the right to obtain review of the Social Security Commissioner's decision. The standard of review that the district court is to apply in reviewing the Commissioner's decision is whether the decision is supported by "substantial evidence." 42 U.S.C. § 405(g); *Jens v. Barnhart*, 347 F.3d 209, 212 (7th Cir. 2003). Here, the plaintiff asserts that the Commissioner's decision was contrary to law and was not supported by substantial evidence. Given that the court has not yet had the opportunity to review the evidence or the Commissioner's decision in the plaintiff's case, it would be inappropriate for the court to decide at this early juncture that the plaintiff's claim has no basis in either fact or law. Thus, there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision and the plaintiff's appeal, therefore, may have merit, as defined by 28 U.S.C. § 1915(e)(2)(B)(I).

Accordingly,

IT IS ORDERED that plaintiff's motion for leave to proceed in forma pauperis
(Docket #2) be and the same is hereby **GRANTED**.

Dated at Milwaukee, Wisconsin, this 29th day of April, 2008.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J.P. Stadtmueller".

J.P. Stadtmueller
U.S. District Judge